HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.144 of 2006

1. Dr. Sanjal Prakash Saxena
   S/o Sri G.P. Saxena
   R/o 14/2/6 Balbir Road, Dehradun
2. Ravindra Khanduri
   S/o Sri P.R. Khanduri
   R/o House No.23 Nehru Colony Dehradun
   Both Directors Doknet Health Care Pvt. Ltd.
   313/1 Street No.9 Kaulagarh Road,
   Dehradun ... Applicants

Versus

1. Judicial Magistrate, Roorkee
   District Haridwar
2. M/s Focus Medicare
   5 Purwawali Dehradun Road
   Near Ganeshpur
   Bridge Roorkee, District Haridwar
   Through its partner
   Sri Virendra Singh & M.D. Tyagi ... Respondents

Sri Amish Tiwari learned counsel for the applicants.
Sri Amit Bhatt learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings and the summoning order dated 01.10.2005 passed by the Judicial Magistrate, Roorkee in complaint case No.1888/2005 M/s Focus Medicare Vs. Dr. Sanjal Prakash Saxena under section 138 Negotiable Instrument Act.

2. Brief facts of the case as alleged in the petition are that the complainant is the supplier of medicines. The complainant had supplied the medicines to the applicants. The applicants had issued a cheque towards the payment of the said medicines. When the complainant submitted the cheque before the bank, the

cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, the complainant served notice upon the applicants as required under section 138 of the Negotiable Instrument Act. On the said complaint, the learned Magistrate took cognizance against the applicants vide its order dated 01.10.2005. Feeling aggrieved by this, the applicants preferred the present petition.

3. Learned counsel for the applicant contended that the alleged cheque was issued on 8.7.2004 to the complainant when the firm was carrying its business. It was further contended that partners of the firm i.e. Virendra Singh and M.D. Tyagi were informed that the said cheque had been lost somewhere and requested to make payments in future by bank drafts. It was contended that the applicants have lodged the report on 11.8.2004 that the said cheque has been lost. Later on, it was revealed that the said cheque had been bounced. It was pointed out that the applicants have also issued other cheques, but those cheques were not bounced. Perusal of the record reveals that the applicants have taken a plea which can only be decided by the trial court. Perusal of the compliant and the statements recorded under section 200 & 202 Cr.P.C transpires that there is a prima facie case against the applicants at this stage. This court cannot evaluate the disputed facts of the case. This court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

5. In view of the above, the petition lacks merit and is dismissed.

(J. C. S. Rawat, J.)

Dated 04.03.2006
LSR